COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

First Ninety Day Report To The Governor And Clerks Of The Senate And House Pursuant To Ch. 463 Of The Acts Of 1976

Respectfully submitted,

JANE C. EDMONDS, Chairman

ALEX RODRIGUEZ, Commissioner

SAM STONEFIELD, Commissioner

June 13, 1977

This report is respectfully submitted by the three Commissioners of the Massachusetts Commission Against Discrimination pursuant to the mandate of Chapter 463 of the Acts of 1976.

I. INTRODUCTION

The Massachusetts Commission Against Discrimination was created by the legislature in 1946. When created, the Commission was known as the Massachusetts Fair Employment Practice Commission. In 1950, by legislative amendment, its name and caption was changed to the Massachusetts Commission Against Discrimination. Over the years to date, the Commission has seen multiple changes in its statutory mandate, primarily in the form of increased jurisdiction. The jurisdictional increases have generally anticipated the changes in and on the federal level and have made the Massachusetts Commission Against Discrimination a forerunner in the fight against discriminatory practices in employment, housing, education and in places of public accommodation. Indeed, some Massachusetts anti-discrimination legislation goes back to the late 1800's.

However, the anti-discrimination legislation or protective legislation so-called, had no forum for enforcement until the creation of the Commission Against Discrimination or the then Fair Employment Practice Commission. In its early days, the Commission was organized as an entity managed by a part-time appointing authority. The Commission was headed by

a Chairman and three part-time Commissioners with salaries of $5,000 for the Chairman and $4,000 each for the associate Commissioners. These salaries over the years were increased from time to time reaching their peak in 1974, when the Chairman's salary was increased to $10,884 and the associate members salaries to $9,760.

Notwithstanding these increases, both private and public management studies indicate that the salaries of the Commissioners were substantially lower than those of other similar state agencies. There was a general feeling and belief that the low salaries granted to this Commission reduced the number of candidates available for appointment to these very important positions.

In the late 1960's and early 1970's, multiple studies by Legislative and Administrative Law Committees, Special Panels appointed by the Executive, and other observers of government organizations, reviewed the organization of other state anti-discrimination agencies. The studies covered the gambit from agencies headed by strong executive secretaries with ten or more part-time unpaid Commissioners acting as hearing officers, to one or two agencies headed by full-time Commissioners. While rare, this latter form of organization appeared, at first blush, to be the most manageable and efficient form of appointing authority.

As early as 1970, and contemporaneous with some of these studies, legislation was crafted by the MCAD General Counsel and supporting legislators attempting to reorganize the MCAD at its top echelon by creating full-time Commissioners.

The rationale for full-time Commissioners seems to have been grounded upon two basic concepts. First, the operation by part-time Commissioners of a state agency with a budget of almost one million dollars appeared to some observers to be absurd, a waste of resources and bad management. Second, those individuals firmly committed to the concept of equality and powerful enforcement of civil rights recognized early that the civil rights movement and the protective legislation already on the books required a full-time commitment, and not part-time Commissioners. Other agencies of state government dealing with less substantive issues and problems were being governed by well paid agency heads or Commissioners.

Steeped in this background, the Commission made its first attempt at reorganization during the 1971 legislative session, when the then Chairman of the MCAD, with the assistance of then Representative Peter Masnick and the former Attorney General of the Commonwealth of Massachusetts, Robert H. Quinn, filed the first petition seeking to make the Commissioners of the agency full-time.

This legislation would have reduced the number of Commissioners from four to three, making each of the three Commissioners full-time, with a salary of $18,500[1/] for the Chairman and $15,500 for the associate members.

1/ The modest salaries attached to the bill were intended to induce the budget conscious legislature to approve this reorganization package.

This legislation and several other bills filed during the following years failed to muster the necessary support in either the House or the Senate to be passed. The next major effort by the Commission to secure a full-time appointing authority came in 1974. During the 1974 session, Representative Charles Flaherty and Senator Joseph DiCarlo filed similar bills in the House and in the Senate to make changes in the Massachusetts Commission Against Discrimination. This legislation like the earlier bill would have reduced the number of Commissioners from four to three and would make each of the positions full-time. The proposed salaries under these bills were $23,000 for the Chairman and $21,000 for the associate members.

Once again, the bill failed to produce the necessary support in either chamber and failed to pass.

The Commission now had three full years of experience with the legislature and with both supporters and non-supporters of its proposal. With this experience and history behind it, the Commission made an additional effort in the 1975 and 1976 session.

Elected in November of 1975, Governor Michael S. Dukakis early in his administration supported the concept of a full-time commission bill. A new bill was drafted and filed for the next session. While there was substantial support from the Executive Office and from the Executive Office of Administration & Finance, the bill was unable to muster the

necessary support before the close of the session and this first attempt by Governor Dukakis failed.

The bill was refiled immediately and the Governor's legislative office, together with MCAD staff, coordinated their effort for passage of the full-time commission bill.

Arguing that this legislation would make a major state agency more accountable in terms of time, resources, and effectiveness, the Commission lobbied hard and long among its regular supporters and from areas not usually in the camp of MCAD. The Commission and the Governor's staff argued that a more effective MCAD could provide better services to Complainant and Respondent alike; that the efficient movement of cases and a higher level of due process would provide better remedies for those entitled to them and more expeditious disposition for the general public. While these arguments did not necessarily produce support from all levels for this legislation, it had the effect of neutralizing some of the past opposition making passage a clear possibility.

On the 15th day of October, 1976, the Great and General Court of the Commonwealth of Massachusetts passed Chapter 463 of the Acts of 1976 establishing full-time Commissioners for the Commission Against Discrimination. The Governor signed the bill on October 22, 1976, and attached thereto an emergency preamble making the bill effective on October 26, 1976.

In this background, Alex Rodriguez of Boston, Massachusetts, Sam Stonefield of Northampton, Massachusetts, and Jane C. Edmonds of Sharon, Massachusetts, were sworn in on the 7th day of March, 1977, as Commissioners and the Chairman respectively by Governor Michael S. Dukakis, as the first full-time appointments to the Massachusetts Commission Against Discrimination. Chairman Edmonds and Commissioners Rodriguez and Stonefield took their respective offices with full knowledge of the basic problems surrounding this important state agency. There was sufficient reason to believe that the passage of Chapter 463 of the Acts of 1976, and its implementation through full-time appointments, would help to alleviate, if not obviate, the problems nagging MCAD. Indeed, the legislature mandated by specific language in this bill that the Commissioners ".... prepare comprehensive reports detailing the effect of the passage of this Act upon the case disposition process of the Commission, with particular emphasis on the reduction of the present backlog of pending cases." The Act further requires that this report be submitted to the Governor and to the Clerks of the Senate and the House of Representatives every 90 days for a period of one year after the effective date of this Act.

While the mandate and emphasis is clearly on the "backlog" problem so-called, it is also clear that the legislature was interested in knowing what other effects the passage of Chapter 463 would have on the entire operation of MCAD.

The balance of this report will deal with specific problems and issues and the effect of the passage and implementation of Chapter '63 of the Acts of 1977.

It is important to note before turning to the substantive portions that this first 90 day report must represent a base line from which we, commissioners, can accurately measure, report, and detail the effect of the passage of Chapter 463 of the Acts of 1976 upon the agency generally and upon case disposition and the backlog problem specifically.

II. MCAD-CASE BACKLOG

MCAD is the state anti-discrimination agency for the Commonwealth of Massachusetts. It is a quasi-judicial Commission mandated to enforce the anti-discrimination laws of the Commonwealth of Massachusetts and to act as the so-called FEP deferral agency for the federal Equal Employment Opportunity Commission. In this capacity, the Commission receives approximately 2,000 cases per year, each requiring various degrees of case processing. This processing may require a simple lack of jurisdiction determination or a highly sophisticated investigation resulting in a finding of probable cause, statutory conciliation efforts, and a full adversary public hearing in the event the case cannot be settled. Thereafter, final orders of this Commission may require appellate review or enforcement through the courts of the Commonwealth of Massachusetts.

In brief summary, this represents the statutory mandate

of this Commission. Through the years, for multiple reasons, some identifiable, others more nebulous, cases have become backlogged in various numbers and degrees of case processing creating one of the most serious and chronic difficulties this Commission has had. Over the years multiple attempts have been made to reduce or end in toto the case backlog. While many of these attempts have been successful, at least in part, they have in turn generated other types of backlog or delays in other areas of this Commission's operations.

It appears that part-time commissioners were simply not equipped in terms of time or in resources to devote the necessary energies to develop a plan for case processing, which when implemented could deal with current case processing, the backlog and all other production problems of this agency simultaneously.

There is no need at this juncture to attempt to analyze the reasons for the backlog problem except to note that this chronic problem is the direct result of three conditions which have been part of this agency for at least the past 5 years. They are in short an ever-increasing jurisdiction as the legislature sought to extend further protection to its constituency and their civil rights; a budget which failed to keep pace with the increased jurisdiction, and in some years one which has been deeply cut, and finally, a more sophisticated public which in those 5 years more than doubled the number of complaints filed with the Commission. These problems represent a formidable challenge and one which part-time management has been unable to handle to date.

It is interesting to note that there is no hard and fast definition of what backlog means. It has, from time to time, been defined in as many ways as there have been attempts to deal with the problem. With the benefit of a recently developed Management Information System,[2/] by mid-July of 1977, this Commission will for the first time in this agency's history be able to identify the exact number of open cases, the names and addresses of each Complainant and Respondent, the case number for each file and its filing date and exact status.

Until the Management Information System is fully implemented and operational, we must depend upon present manual systems to identify and approximate our present open cases awaiting processing and/or determination by this Commission.

We note that one of the reports generated by the Community Dispute Services Division of the American Arbitration Association has documented quite well the long delays in case processing under present methods and suggests that the new

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[2/] The Management Information System referred to herein represents one of the products received by this agency as a result of a contract entered into between MCAD and the Community Dispute Services section of the American Arbitration Association. This contract with American Arbitration Association was paid for through a special grant secured by MCAD from the Equal Employment Opportunity Commission on September 28, 1976, which funds were then subcontracted to the provider on November 17, 1976. The program is designed to establish an in-house capability to increase cost effectiveness of this agency in case processing; specialized staff training for existing MCAD investigators and attorneys; and the development and implementation of a computerized management information system. A copy of the grant contract and the sub-contract are attached hereto and marked Exhibits A1 and A2. All other relevant data concerning this contract and its implementation is available at the offices of the Commission for any interested person.

procedures should be able to provide the Commission with the capability of making determinations in cases in or within 90 days of filing.

Accordingly, for purposes of this report, this Commission will regard all cases filed prior to January 1, 1977 as its backlog. Since we cannot anticipate full implementation of new case processing procedures until mid-July of 1977, we cannot use a "91-day" standard to define backlog. However, we do anticipate considering it as a standard in the very near future.

Through our manual system[3/] we have determined that this agency has an open case inventory as of May 31, 1977 of 3,511 cases. This figure includes cases filed up to and including that date. For the last three month period, this Commission has processed and closed some 645 cases. This represents an increase of 283 cases closed for the same period during 1976. For this same 90-day period, this Commission has secured and paid out $83,632.46 in damage awards. This figure represents an increase of $51,869.03 for the same period last year. These summaries for the last 90 days have been culled from full reports for each of the last three months, copies of which are attached hereto and marked Exhibits C1,C2 and C3.

3/ The manual system cannot be regarded as totally accurate and these figures are subject to revision upon full implementation of the Management Information System which is anticipated sometime in mid-July of 1977.

This increase in production and recovery is directly related to the emphasis which we have conveyed to our staff with respect to the backlog problem, as well as our direct participation in the case processing effort. We understand from our General Counsel that this direct participation by Commissioners represents the first time in 5 years that Commissioners have been directly involved in the case processing effort. The additional benefits of this effort and production which this effort and production has had on staff cannot be measured by numbers or dollars alone.

Notwithstanding the substantial increase in processing, we cannot be satisfied until the remaining inventory has been brought to a manageable level, and until we have achieved a "90-day" standard in defining backlog itself.

B. Public Hearings and Preliminary Appeals

We noted in an earlier section of this report that earlier attempts to treat the backlog problem usually generated mini-backlogs in other operations of this agency. It is important to note at this juncture that during the relevant 90-day period, this Commission has brought 4 cases to public hearing,[1/] each of which has been completed or disposed of during this adversary proceeding. As with our backlog, we

[1/] The Commission is continuing to experiment with multi-track recording devices to record testimony at public hearings to obviate the need and expense of costly court stenographers. The results of these will be the subject and part of the second 90-day report.

[2/] We have been advised by our General Counsel that preliminary appeals hearings were generally scheduled once or twice a year by former administrations. Through our rule-making and policy making procedures, preliminary appeal hearings will be held every 45 days, at least. Our present scheduling has virtually eliminated all present pending appeals, some of which date back to cases closed during 1974 and 1975.

have identified through our manual system some 124 cases which are awaiting public hearing. Through our revised Rules of Procedure and rule-making authority, we have developed procedures for dismissing those cases which do not warrant public hearings, and other pre-trial hearing procedures which should help to substantially reduce and eliminate this smaller backlog of cases awaiting public hearing.

Further, during this relevant 90-day period, the Commission has scheduled some 102 preliminary appeal hearings. Some____cases were heard on the merits and decisions issued. An additional_____cases were disposed of through the default procedures.[5]

While the task of disposing of a large number of dated and aged open cases may appear onerous, if not impossible, with the limited staff resources currently available, we strongly believe that MCAD, through the implementation of new procedures and innovative techniques cannot only keep current with cases filed at the Commission but can continue to reduce the inventory of backlog cases that have plagued this agency over the past few years.

We discussed earlier the special EEOC grant which has provided the funds for a training program; analysis of MCAD procedures and the development of a Management Information System. What follows is a summary of these procedures and innovations which when fully implemented will allow for an increased rate of case processing and result in the elimination of the MCAD backlog.

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C. Training and New Procedures

MCAD has begun an extensive project utilizing the services of the Community Dispute Service Division of the American Arbitration Association calling for the implementation of new procedures; the development of a computerized management information system; and the training of all staff in investigative skills. Currently, the average MCAD case takes more than 18 months to process. Upon the completion of the EEOC funded project,[6/] it is estimated that the average case will be processed in or within 90 days.

The new procedures will become operational in approximately three months. They will include revised methods for taking discrimination complaints and will allow staff to quickly dispose of cases that are frivolous or without obvious merit. Also to be implemented is the utilization of pre-determination settlement conferences which will permit resolution of cases prior to lengthy investigation. Further streamlined investigative procedures are being developed and will be standardized to eliminate the current ad hoc approach to field investigations.

In order to assure the success of the expedited case processing procedures, an intensive training program has been scheduled for MCAD staff. On June 20, 1977, a two week initial training program will commence for investigators and attorneys in the utilization of new procedures and in basic negotiations,

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6/ We expect our production under the EEOC grant funded contract to be delivered on or before the 1st day of [illegible], 1978.

[illegible] 1977.

mediation, conciliation, fact-finding, investigative techniques and skills. While the training sessions will cause a temporary reduction in the rate of case closures, staff efficiency will significantly increase and ultimately improve the case processing capabilities of the Commission.

A major accomplishment in the past 90 days affecting case processing has been the establishment of a computerized management information system. Beginning in early June, the Commission will receive a weekly printout indicating the status of cases filed at MCAD. The system will free staff of tedious record keeping and statistic gathering, and more importantly, assist the Commission in identifying problem areas in the case disposition process.

Many organizational changes are being instituted to complement the procedural changes at MCAD. More noteworthy is the formation of a Control Division. Comprised of existing staff, the Control Division will maintain the management information system, coordinate scheduling of LOPC appeals hearings and public hearings, monitor case processing, including the identification of bottlenecks, and respond to inquiries on the status of cases. In performing these functions the Control Division will free the time of supervisory and investigative staff and permit them to concentrate on the closing of cases.

D. Legal Interns and Volunteers - Special Task Force

In addition to the efforts being made under the EEOC project, a special unit is being created to dispose of older cases in the case inventory. The unit will begin operating on June 6, 1977, for a period of three months, and will be comprised of

of students has been very beneficial to this agency and there is every reason to believe that their services this summer will result in a significant reduction of the case inventory.

III. CHAPTER 463 OF THE ACTS OF 1976-OTHER EFFECTS

We believe that the benefits to be derived from full-time commissioners cannot always be measured quantitatively. We believe the presence of commissioners on a regular full-time basis has produced an accountability which has lent stability to the agency and has helped create a more positive attitude among employees.

Continuing with the mandate of Section 5 of Chapter 463 of the Acts of 1976, we will now deal with certain other effects produced by the passage of this legislation.

This Commission, as presently constituted, cannot and will not take credit for all institutional and organizational changes which result in success to this agency. There are several such projects which were conceived during earlier administrations and continued during our immediate predecessor's term of office. At several points in this report we referred to this agency's contract with the Community Dispute Services Division of the American Arbitration Association for an evaluation of 1976 case processing and an analysis of the management structure of the Commission Against Discrimination. The seeds for this innovative design were first conceived by former Chairman Glendora M. Putnam. Her initial efforts, together with a firm commitment from Secretary of Administration and Finance, John R. Buckley, helped to bring this proposal to its present state. We are extremely pleased to be a part

helped to accelerate certain results and goals. The Commissioners, in unison, have demonstrated their confidence in its potential and in its effectiveness. Full and immediate implementation of its goals will in turn develop full accountability and efficiency by every person in this agency.

B. Federal Grant Programs

This agency has been the recipient for several years of a regular grant from the Equal Employment Opportunity Commission. In addition, this agency was the recipient of a special grant from the Department of Housing and Urban Development in the amount of $120,000, which funds became available during the relevant 90-day period. While both of these grants had been negotiated prior to our appointment, an individual commissioner has now been assigned the responsibility to monitor each of the grant programs thereby relieving our General Counsel from this administrative responsibility and burden. It is our hope that the additional weight of the office of the commissioner and his direct involvement in the grant program will help this agency in increasing funding from these sources.

C. A-95 Review System

A major aspect of this Commission's increased jurisdiction is its so-called A-95 Review system. The A-95 Review process as enunciated by the United States Congress and the President's memorandum dated November 8, 1968, [illegible] there shall be a centralized review of all federal grant applications at the state and regional level, particularly

impact. This review function has been passed on to this agency. Notwithstanding a lack of financial and physical resources, our predecessors initiated a limited program wherein MCAD would conduct a civil rights review of federal grant applications and provide advisory comments to the state clearinghouse in the Office of State Planning. In order to meet this commitment, the agency had to divert normal staff resources normally engaged in the Commission's regular case processing function.

Our predecessors recognized the great potential to establish equality of opportunity in the delivery of services and in employment at both the state and municipal level in the Commonwealth of Massachusetts, without resort to the complaint process via the use of the A-95 Review system. However, the agency suffered via the diversion of resources to this effort.

After having had the opportunity to review this Commission's A-95 system, we recognized immediately that present staff was over-extended in its function and could not properly perform the reviews necessary and develop the potential that the process would otherwise provide. Accordingly, we requested our General Counsel to review the HUD Grant negotiated by our predecessors and determine whether or not we could renegotiate the scope of work to narrow the project and restrict the scope substantially to an expansion of our A-95 capability. If this could be done

then the redirection of these funds in their entirety to the development of a full state civil rights review capability would help to insure equality of opportunity for minorities and women in all state and federally-assisted projects in the Commonwealth.

Within the relevant 90-day period these negotiations were completed and the scope of work modified to emphasize the A-95 expansion effort and to delete other projects of a less important nature.

This policy change has had both an immediate and positive effect. With these increased resources, we have been able to prepare more substantive comments on the pending applications, increase the number of reviews and develop a sound and responsible relationship with other state and federal offices involved in this process. We are particularly gratified to see the public response to this activity. A copy of a recent Boston Globe editorial is attached hereto and marked Exhibit D.

The acceleration and improvement of this agency's A-95 review capability will help to insure equal opportunity for minorities and women and assure the continued flow of federal dollars into the cities and towns in the Commonwealth of Massachusetts.

IV. CONCLUSION

We will not use this section of the report to summarize all of the points which we have attempted to articulate in the previous sections. However, we do feel that it is important to reiterate that this first 90-day report represents

the base line from which the next three reports will issue. In those reports, we believe that we can reflect a more accurate measure of both our performance and the effect of Chapter 463.

We have attempted in this report to put Chapter 463 in its proper legislative and historical perspective; identify the major problems facing this agency and the Commissioners when we took office; and the immediate steps which we have taken to address the problems and the issues facing us. Some of our efforts have produced immediate and tangible results. Others will take more time.

Respectfully submitted,

EXHIBITS

Exhibit A1 - EEOC Grant Contract No. EEO 76099 for the amount of $71,559.48

Exhibit A2 - Agreement between MCAD and Community Dispute Services of the American Arbitration Association dated 17 November 1976.

Exhibit C1 - March 1977

Exhibit C2 - April 1977

Exhibit C3 - May 1977

Exhibit D - Boston Globe Editorial

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Second Ninety-Day Report To The Governor And Clerks Of The Senate And House Pursuant To Chapter 463, Of The Acts Of 1976

Respectfully submitted,

JANE C. EDMONDS, Chairman

ALEX RODRIGUEZ, Commissioner

SAMUEL STONEFIELD, Commissioner

December 7, 1977

This second Ninety Day Report is respectfully submitted by the three Commissioners of the Massachusetts Commission Against Discrimination pursuant to the mandate of Chapter 463 of the Acts of 1976.

I. INTRODUCTION

This report represents the second submission of the Massachusetts Commission Against Discrimination detailing the effect of the passage of Chapter 463 of the Acts of 1976 upon the case disposition process of the Commission, and in particular, on the reduction of the present backlog of pending cases.

For purposes of continuity, we respectfully call your attention to the first Ninety Day Report submitted on or about the 20th day of June, 1977.

II. MANAGEMENT REFORMS

The first Ninety Day Report submitted by this Commission outlined in some detail the management reforms implemented by the recently appointed full-time Commission and their objectives. Many of the systems and plans detailed in that first report are now in operation. Because we have experienced some delays in implementing all aspects of this management information system, the subcontract has been extended by agreement of all the parties, up to and including January 28, 1978. However, the Commission's case inventory, and training process, and the establishment of standardized personnel policies have been completed in full.

During the first 90 days of our tenure, we have completed the plans and system to convert the various docketing, record-keeping and report systems dealing with the status of cases

under investigation from a manual to an automated system. Preliminary to this effort, an intensive two-day inventory of all cases in the agency was necessary to determine the exact status and location of each file and to determine the number of files lost in prior years. The data was then transcribed for coding and keypunching.

Lost files constitute a significant percentage of so-called backlog. Admittedly, identification of "lost" cases presents a serious problem. We have elected to address the issue of "lost" cases in order to determine how to deal effectively with this segment of backlog virtually ignored to date.

The present management information system enables the agency to track the progress of each case through a number of processes including investigation, conciliation, appeal and public hearings.

Since June, we have been generating a full series of reports on a bi-monthly basis. These reports include an alphabetic listing by complainant and by respondent which describes the most recent action on the case, the date of that action and the person (investigator, staff attorney or Commissioner) completing that action. Additionally, a case status report lists the same information (event, date, person) for each action taken on the case since it was filed; this report lists the cases chronologically and in docket number order. All three reports provide significant benefits as a management tool with the production of several bottleneck reports both in detail and in summary. The bottleneck summary tells how

many cases are currently in each event status. The bottleneck detail lists the docket number and complainant's name for all cases by status in order of elapsed days since the last action (event). In this way, the Commission is able to focus on the cases that have been delayed in any one event for whatever period of time it deems excessive and notify departmental managers or individual staff personnel of the Commission's concern for improvement.

The reports are used, also, to answer status inquiries from the parties, EEOC, and other departments of the Commonwealth on a timely basis. The response time for a standard inquiry equals less than 30 seconds, sharply reduced from the past high of several hours or even days.

Current efforts are being spent on "cleaning up the files," i.e., adding information previously omitted or deleting extraneous data entered when the master file was created. It should be noted that the computerized files are only as accurate as the manual card file from which they were created. In a real sense, we are correcting all of the record inaccuracies that have been accumulated in the last ten years. Needless to say, this is a project which will continue throughout the third quarter.

III. THE BACKLOG EFFORT

One of the most difficult problems in dealing with backlog is to avoid creating sub or mini backlogs in other areas of the Commission's operation. Equally important has been the difficulty in maintaining high level case processing efficiency together with the normal standards of due process to the

parties involved in a charge process. Increases in the quantity of backlog cases resolved alone will not impress the new Commission unless every reasonable effort has been made to guarantee the rights of complainants and respondents alike. Thus every administrative closeout, without a determination on the merits, is without prejudice to the complainant. Multiple levels of notice have been established before a case is closed and every administrative closure is susceptible to a re-opening by a complaining party for good cause shown. Further, it has been established by this Commission that the standards for "good cause" be liberally applied.

The obvious objective of any backlog approach is to dispose of and to close as many cases as possible within the established period of time. For purposes of this effort, we set a 6 to 8 week period for phase one that began on or about the 22nd day of July, 1977. It continued for an 8 week period.

Our initial effort or first stage backlog produced certain results. We have identified all open cases requiring further processing for closure. We have identified a significant number of "lost" cases on files which in turn will require a strategy. Finally, we have during this period channelled approximately 425 backlog case folders to staff for case processing. The results follow:

1. total number of cases in backlog effort----425
2. total number of cases closed----------261

Phase two of the backlog effort was started on or about October 7, 1977 contemporaneous with the implementation of

the new case processing techniques.[1/] As part of the new processes, field representatives will be required to turn in their older case load and will be assigned current cases. The returned case folders, together with our other non-current cases, will be treated as backlog and assigned to a fully staffed backlog unit. This unit will consist of two senior MCAD investigators, CETA employees, and approximately ten law student interns. This unit will follow procedures similar to those used in phase one. The results of this process will be reviewed in our next report.

We have clearly accepted both the challenge and the mandate of Chapter 463 of the Acts of 1976, and have demonstrated our commitment and intent to end this Commission's backlog problem. To date, we have employed every reasonable effort to maintain this commitment, and to continue to search for new ways and methods to increase productivity on backlog case processing while staying current on new charges.

While inroads have been made into the backlog problem, elimination of the problem is clearly dependent upon more staff and additional resources. In our first report to you, we noted that while we recognized the need for economy and fiscal sense, some additional funding and additional investigator's positions were critical to ultimate success to our goal and your mandate. This continues to be true, and accordingly, we have projected those positions in our fiscal 1979 Budget.

[1/] Section IV of this report will deal briefly with the new case processing techniques. The processes and guidelines therefore were developed under the special EEOC grant more fully described in our first report.

IV. NINETY DAY STATISTICS FOR THE MONTHS OF JUNE, JULY AND AUGUST 1977

The following represents the comparative statistics for the second ninety day period as compared with the same period during 1976.

COMPARATIVE SUMMARY

JUNE - AUGUST 1976
JUNE - AUGUST 1977

A. NEW COMPLAINTS RECEIVED

	1976		1977
JUNE	163	JUNE	192
JULY	168	JULY	167
AUGUST	176	AUGUST	186
	507		545

B. COMPLAINTS CLOSED

	1976		1977
JUNE	147	JUNE	139*
JULY	223	JULY	237
AUGUST	159	AUGUST	266
	529		642

*Two week training session
During this period, case inventory has been reduced by 97 cases.
Total reduction of inventory during tenure of full-time Commissioners to date - 311.

MONETARY AWARDS TO COMPLAINANTS

	1976		1977
JUNE	$ 4,861.40	JUNE	$ 26,689.40
JULY	15,160.50	JULY	13,093.55
AUGUST	10,687.00	AUGUST	9,227.12
	$ 30,708.90		$ 49,010.07

During this period monetary awards increased by $18,301.10
Total increase of monetary awards during tenure - $70,170.20

V. CASE PROCESSING GUIDELINES

In the first 90 day report, we discussed in some detail the special grant from the EEOC which we received and part of which we used to develop new case processing guidelines for use by this agency. The development of these techniques have been the result of an intense collective effort by us and by the Community Dispute Services of the American Arbitration Association. These efforts have resulted in the development of techniques for rapid charge case processing, guidelines related thereto, and in-depth training sessions for all MCAD staff in their use. On October 7, 1977, these techniques[2/] were put into practice and are part of present MCAD case processing. These techniques will continue in use for a trial period of some two months duration. Following this period,the working draft of guidelines will again be subjected to intense review and scrutiny by us.

We fully expect that the use of these techniques will permit MCAD to dispose of a complaint in or within 90 days from the date of filing. Of equal importance, it is our expectation that this tool will help to prevent this Commission from developing a further backlog of cases. In the most simple terms, the new rapid charge case processing techniques will be used on all new filed cases, so-called current cases, while a special backlog team will devote its efforts to the so-called older or backlog cases. Thus, we look upon the rapid charge procedures as not only a method to speed up all current case

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[2/] A complete description of these guidelines and techniques are available at the offices of the Commission, upon request.

processing but a preventive tool to deal with backlog problems.

VI. COMMISSION'S OTHER RELATED ACTIVITIES

The following sections of this report will deal with other activities which this Commission maintains in addition to the case investigative processes. It is important to outline, at least in part, these additional activities in order that the case processing sections and backlog efforts be shown in perspective to the Commission's entire operation.

1. CASES CERTIFIED TO PUBLIC HEARING

As the backlog effort continues, a certain number of cases presently in the conciliation phase of case processing will be moved more rapidly to certified cases for public hearing. At least to some extent this movement represents a reduction of backlog cases. To be more specific, cases which have lingered in the conciliation stage for too long a period of time, and which by virtue of the date of filing are regarded as backlog cases, will be certified to public hearing when a determination has been made that conciliation is either unsuccessful or unrealistic. Accordingly, the list of cases certified to public hearing should be increasing substantially during the months of August, September and October, 1977. To this end, the legal staff, and the office of the General Counsel, will be responsible for developing a plan to deal efficiently and responsibly with this secondary backlog. We expect and anticipate two plans to evolve. The first will be a proposal for guidelines to deal with the conciliation process itself. These guidelines will include time frames, basic demands for different types of cases, scheduling of

cases for conciliation efforts, and methods of techniques to be used during this case processing function. These items represent only part of the topics to be covered in such guidelines. The second plan which we anticipate will evolve out of this effort will be some form of central litigation center wherein cases certified to public hearing will be filtered, reviewed and put into a posture for dismissal, settlement or ultimate public hearing. Once again, we expect certain guidelines to be developed in order to dispose of this growing mini-backlog of cases.

2. RULES OF PROCEDURE

During the backlog effort and the implementation of the Management Information System and case processing techniques developed by the Commission with the assistance of the Community Dispute Service Section of the American Arbitration Association, the Commission's Rules of Procedure have undergone constant review and modification. This review was primarily intended to bring our new Rules into conformance with the changes adopted by the Commission via the Management Information System and the case processing techniques and proposals suggested by CDS. This review has helped the agency to discover inconsistencies, problem areas and faults which were not seen during the period when the Commission promulgated the Rules of Procedure in the first instance. Therefore, we anticipate that we will be able to make substantially all of the necessary revisions in the Rules of Procedure contemporaneous with the implementation of our new case processing techniques and Management Information System.

3. CREDIT GUIDELINES

This Commission has taken a most active role in the development of Credit Guidelines vis-a-vis our state statute and the recently promulgated federal guidelines on credit. Very recently, changes were made at both levels and these changes and modifications were adopted by the Commission on September 1, 1977. A copy of the Commission's Credit Regulations is attached hereto as Exhibit A.

4. FIELD OFFICES - SPRINGFIELD, WORCESTER, NEW BEDFORD

Under the provisions of the full-time Commission bill, so-called, the legislature made provisions with respect to the formal establishment of field offices for the Commission Against Discrimination. In addition, the legislature provided and delegated to the appointed Commissioners regional responsibility with respect to these offices. This delegation has been followed by the present Commissioners, and, in addition, certain additional support services have been provided for these offices.

In the Springfield office of the Commission Against Discrimination, we have developed a cadre of volunteers under the supervision of a senior field representative to assist in the case processing function carried on by this office. In addition, the full-time commissioner resident of the Springfield area has maintained a regular schedule of attendance and participation in this office to assist in its management and activities. This same commissioner has divided his time between

Springfield and the Worcester office. Certain difficulties in maintaining staff personnel in Worcester have precluded the Commission from developing the Worcester office as fully as Springfield. However, it is anticipated that with the hiring of new personnel on or about the first of October, 1977, this problem will be obviated and the Worcester office will be operating at full capacity shortly thereafter. In recent years, attrition in our legal department have resulted in spotty supervision of the New Bedford field office. During this second ninety day period, the Commission has placed on staff one additional attorney to be assigned the responsibility of supervision of the New Bedford office, together with the commissioner responsible for that operation. In addition to general supervision of the office, this staff person has been made responsible for the development of a volunteer staff to assist in the operation of the New Bedford office and the securing of some local members of the Bar to give a certain number of hours per week for the maintenance of this office. At the present time, there are two local New Bedford attorneys who have volunteered a number of hours per week pro bono to the Commission Against Discrimination for assistance in the New Bedford office. It is expected that full implementation of a volunteer program will have taken place by the end of October, 1977.

5. EEOC FEDERAL GRANT PROGRAM - 1977-1978

On November 30 1977, the present EEOC Grant Program to this agency will come to an end. It is important to reiterate

how valuable this grant has been to this agency. Beginning in 1969, with a grant of less than $20,000. this grant has developed and expanded to more than $200,000.00. As we noted in our first report to you, this grant is responsible and supports the entire legal division of the Massachusetts Commission Against Discrimination, as well as a large number of field representatives and support service personnel.

With the appointment by the President of a new chair to the Equal Employment Opportunity Commission the commissioners of MCAD took the opportunity to travel to Washington en banc and meet with Chairman Norton and her representatives. The purpose of this meeting was to lay the ground work for the negotiation of an even larger grant program. While a substantial increase in funding may not occur during this contract period, we feel confident that the basis has been laid for substantial expansion of this grant and program during the 1978-1979 period. However, we have not yet determined that we cannot secure some additional funding for the present fiscal period. During the second week of September, 1977, this Commission's General Counsel began meeting with EEOC representatives for the formulation of a new contract and further funding. The exact nature of the contract, the grant and the funding will be available in either an addendum to this report or in our next report to you.

6. PUBLIC INFORMATION

As part of the personnel cutback mandated by the Office of Administration and Finance during 1975-1976, the then constituted Commission opted to drop the position entitled "Public Information

Officer." While there was some concern that an agency this small did not require its own internal information officer, this Commission has felt the loss of this office and the staff person working therefrom. Many of the major efforts of the Commission and the elements of its reorganization require public notice, public hearing and exposure to both the complainants' and respondents' bar. This function, normally carried out by the Public Information Officer, has been sorely missed. Accordingly, the commissioners three have individually and collectively assumed this function and have devoted large amounts of their personal and private time to radio, television, newspaper and other media appearances in order to carry out this function. It is estimated that the three commissioners have had more than 50 personal appearances and/or interviews carried in the major media. These have included both of Boston's newspapers, two national magazines, most of Boston's local TV news programs and talk shows. Before the end of September, 1977, the commissioners will meet en banc with a major committee of the Boston Bar Association to discuss the implementation of the Commission's Management Information System and case processing procedures. On balance, this exposure has been received very well and the audience most receptive. It has established an avenue of communication wherein the Commission can respond to the needs of both the complainant and respondent bar alike. It is this Commission's hope that this public image and public relations aspect will continue, however, we intend to narrow the scope by meeting individually and collectively with advocacy type groups rather than general exposure. During coming months,

we intend to be meeting with representatives of the Massachu - setts Law Reform Institute, the Committee for Civil Rights under the Law, other committees of the Boston and the Massachusetts Bar Association, and those other groups that have vested interests in the multiple jurisdiction over which this agency has statutory authority.

7. THE INTERN PROGRAM

From time to time over the past two or three years, this Commission has made some use of volunteers from the local law schools and colleges. These individuals have been placed in various volunteer functions with the agency but, primarily in either the law department or as assistants in writing cases for the office of Field Operations. The success of these volunteers and legal intern programs has prompted this Commission to make a concerted effort this fall to develp a broader-based program for each semester for the next two years. We intend to prepare a plan for legal and non-legal interns to be culled from the various local law schools and colleges. This plan should be available within the next 10 days and implementation thereof completed by the end of November, 1977. It is our expectation that we will attract as many as 20 volunteer legal and non-legal interns working for each semester, in the office of the Commission under the direction of two senior field representatives, who, in turn, will be under the supervision of the Director of Investigations and the General Counsel. In consideration of their services, the Commission has provided and will provide a detailed curriculum to the student's school as well as supervision

and evaluation of the student assigned to the agency. Evaluations by the Commission will be forwarded to the student's school. In many instances volunteers are actually working for course credit, and, therefore, their work product has normally and generally been exceptional

8. FEDERAL/STATE CIVIL RIGHTS REVIEW

During the past ninety days, the division staff initiated the implementation of the grant review program for state and federal grants in fulfilling the HUD grant contract entered into during the previous quarter. Start-up administrative activity, such as the recruitment and hiring of personnel; staff training and development of program objectives were accomplished. Additionally, the following activities were achieved during the 90 day time span:

a. Standard operating procedures for A-95 review were developed.

b. Draft affirmative action guidelines for housing and employment have been developed.

c. Initial program development for review of state grant projects were developed with the Executive Office of Environmental Affairs.

d. Near final drafts of department of Community Affairs Affirmative Actinn guidelines have been negotiated and will be the subject of public hearings within the next 45 days.

e. Memoranda of Agreements with a significant number of cities and towns have been entered into, following negotiations. These Memoranda of Agreements include, for the first time, the

requirement for the development of affirmative fair housing programs by cities and towns.

f. A training conference for cities and towns to direct them in the review methods and operations of the Commission was held in June. Approximately 50 cities and towns attended the conference along with representatives from certain state organizations. Beyond providing technical assistance and information with respect to recent program developments by the federal Office of Revenue Sharing.

g. Civil Rights Review - a number of reviews were conducted under the A-95 review process of cities' and towns' applications. Additional follow-up occurred on comments made during the previous quarter, such as the City of Boston's Community Development Block Grant Application. The commissioners met with the Secretary of HUD, as well as a number of other federal officials, with respect to issues raised in that report in an attempt to effect solutions to those issues.

9. GENERAL COMMENTS

While a portion of the initial three months time span was devoted to program initiation and developments of advisory guidelines, this next quarter, of September through November, will provide the first real test of full implementation of the programs. It is anticipated that large numbers of communities will come into compliance with the Commission through the development of Memoranda of Agreements by the development of affirmative action programs in the area of internal public employment, contract compliance, and housing.

10. PUBLIC EMPLOYMENT COMPLAINT ACTIVITY

Two field investigators are assigned to the division to conduct investigation of complaints filed against public sector employers at the state, county and local level. During this time approximately 34 public sector cases were completed by the two field investigators. Additionally, liaison work began with the newly appointed State Director of Affirmative Action in integrating elements of that office's programs into both the Commission complaint procedure and to the civil rights review procedure under A-95 state reviews.

11. CONTRACT COMPLIANCE

Renewed attention with respect to the enforcement of the contract compliance program was initiated. The Commission formed a Construction Task Force, consisting of Commission and other public agency members who are involved or impact the issue of minority and female employment in the construction industry. Initial progress in this area included assistance in the development of proposed contract language for use by state agencies (and local government) on the Part II, Public Works Program. Additionally, the Commissioner of Labor and Industries will be issuing an official ruling on the ability of state, city and town entities to fulfill their Economic Development Administration requirements within the framework of certain state bid statutes.

The Commission has also completed a redraft of the proposed public hearing guidelines for initiation of formal non-compliance proceedings against state contractors who appear to have failed to meet numerical hiring goals. Preliminary activity is prepared

with respect to hearings of those complaints within the next thirty days.

12. FEDERAL OFFICE OF REVENUE SHARING

The Commission continued to assist local cities and towns in developing their response to the findings, or investigations, by the Federal Office of Revenue Sharing of allegations of discrimination under the act. As an example, the Commission was able to negotiate a Memorandum of Agreement with the City of Melfrose which allowed the Office of Revenue Sharing to close the case, absent a formal finding of discrimination, but providing a specific remedy as required.

13. EXECUTIVE SECRETARY

The creation of a full-time commission has allowed us to institute certain management changes. The present Chairman serves as the chief administrative officer and carries out the administrative functions formerly performed by the director of administration*. The position of executive secretary, created at the inception of the MCAD was occupied by one person until his resignation in 1976. From 1976 until September 1977, the executive secretary's position was vacant. With both the position of Executive Secretary and Director of Administration vacant, we made a careful study of both positions, the salaries, job descriptions, and the Agency's needs with respect to administrative function. We determined to fill the position

*The individual holding this position was brought to MCAD by the former chairman under an IPA transfer with the Department of Housing and Urban Development absorbing almost 50% of his salary. By mutual agreement, the IPA transfer terminated on the 30th of June, 1977, and the person holding the position returned to his post at HUD in San Francisco, California.

of Executive Secretary and began immediately a long and hard search for the best qualified person to fill this post. We screened more than 35 applications and interviewed approximately 10 candidates, four of whom were finalists. On or about the first of September, 1977, the Commissioners unanimously selected Ms. Virginia Parks for the post of Executive Secretary.

With the Executive Secretary in place, the Commissioners now have more available time to carry out the policy making and quasi-judicial functions of the Agency.

REGULATIONS CONCERNING DISCRIMINATION IN CREDIT

Pursuant to Massachusetts General Laws, Chapter 30A, Section 2(3), the Massachusetts Commission Against Discrimination has found that immediate adoption of these amendments is necessary for the preservation of the general welfare. Therefore, observation of the requirements of notice and public hearing prior to their effective date would be contrary to the public interest.

SECTION 1. AUTHORITY, SCOPE, ENFORCEMENT, FEDERAL INTERPRETATIONS, EFFECTIVE DATE.

(a) Authority and Scope. This Regulation comprises the regulations issued by the Massachusetts Commission Against Discrimination pursuant to §3(5) of Chapter 151B of the General Laws. This Regulation implements the following provisions of Massachusetts statutory law: §§4(3B), 4(10), 4(14) and 5 of Chapter 151B of the General Laws and §98 of Chapter 272 of the General Laws (the foregoing statutory provisions are referred to herein collectively as the "Credit Discrimination Statutes"). Except as otherwise provided herein, this Regulation applies to all persons who are creditors, as defined in §2(m).

(b) Administrative Enforcement. Compliance with the requirements imposed under the Credit Discrimination Statutes and this Regulation shall be enforced by the Commission.

(c) Interpretations by the Board of Governors. The Commission takes note of the fact that this Regulation is similar in scope and terminology to Regulation B[1] of the Board of Governors of the Federal Reserve System. Because of the substantive similarities between many of the provisions of this Regulation and the comparable provisions of Regulation B, the Commission has established the procedure specified below in this §1(c) regarding the effect to be given by the Commission to official Board interpretations and official staff interpretations[2] which are issued under Regulation B by the Board or by a duly authorized official of the Board.

Each official Board interpretation and official staff interpretation, whether issued prior to, on or subsequent to the date of this Regulation, that interprets a provision of Regulation B that is similar in substance to a provision of this Regulation shall, until rescinded by the Board, be deemed by the Commission

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1 12 CFR 202.

2 See the description of "official Board interpretations" and "official staff interpretations" appearing at §202.1(d) of Regulation B.

to be an advisory ruling issued by the Commission under §8 of Chapter 30A of the General Laws. If the Commission determines that any official Board interpretation or official staff interpretation that is deemed to be an advisory ruling is contrary to the purposes or meaning of any of the Credit Discrimination Statutes, the Commission shall commence an amendment process under §2 of Chapter 30A of the General Laws to amend the provisions of this Regulation that were interpreted by the applicable official Board Interpretation or official staff interpretation.

If any provision of Regulation B is amended by the Board and the provision so amended is similar in substance to a provision of this Regulation, the Commission shall, as soon as practicable after the Board's promulgation of the amendment, commence an amendment process under §2 of Chapter 30A of the General Laws with a view toward determining if the provisions of the Credit Discrimination Statutes would be supported by the adoption of a similar amendment to this Regulation.

(d) Interpretation. This Regulation shall be interpreted in a manner consistent with the Federal Equal Credit Opportunity Act and Regulation B as they may from time to time be interpreted or amended.

(e) Severability. The provisions of this Regulation are severable, and the fact that any provision is found to be invalid for any reason shall not affect the validity of any other provision.

(f) Effective Date. Unless otherwise stated, this Regulation shall be effective with respect to all transactions occurring on or after June 1, 1977.

(g) Repeal of Existing Regulations. This Regulation hereby repeals the COMMISSION'S REGULATIONS CONCERNING DISCRIMINATION IN CREDIT BECAUSE OF SEX OR MARITAL STATUS, effective date January 31, 1975, as amended August 1, 1975.

SECTION 2. DEFINITIONS AND RULES OF CONSTRUCTION.

For the purposes of this Regulation, unless the context indicates otherwise, the following definitions and rules of construction shall apply:

(a) Account means an extension of credit. When employed in relation to an account, the word use refers only to open end credit.

(b) Adverse action. (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(c) Age refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(d) Applicant refers only to natural persons and means any such natural person who either requests or has received, within the Commonwealth, an extension of credit from a creditor, and includes any such natural person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(e) Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A completed application for credit means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(f) Board means the Board of Governors of the Federal Reserve System.

(g) Commission means the Massachusetts Commission Against Discrimination.

(h) Consumer credit means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) Contractually liable means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) Credit card means any card, plate, coupon book, or other single credit device existing for the purpose of being

used from time to time upon presentation to obtain money, property, or services on credit.

(l) Credit Discrimination Statutes means the following provisions of the General Laws: §§4(3B), 4(10), 4(14) and 5 of Chapter 151B and §98 of Chapter 272.

(m) Creditor means a person, including, but not limited to, banks, trust companies, licensed lenders, mortgage lenders, savings and loan associations, credit unions, credit card issuers, utility companies, finance companies, wholesale and retail merchants, and educational institutions, who, in the ordinary course of business regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of any Credit Discrimination Statute or this Regulation committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(n) Credit transaction means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(o) Discriminate against an applicant means to treat an applicant less favorably than other applicants.

(p) Elderly means an age of 62 or older.

(q) Empirically derived credit system. (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied

for credit within a reasonable preceding period of time; and

(ii) determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A demonstrably and statistically sound, empirically derived credit system is a system:

(i) in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (2)(iii), then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(r) Extend credit and extension of credit mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance

of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations or the continuance of existing credit without any special effort to collect at or after maturity.

(s) Good faith means honesty in fact in the conduct or transaction.

(t) Inadvertent error means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(u) Judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(v) Marital status means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Regulation the term "unmarried" includes persons who are single, divorced, or widowed.

(w) Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(x) Open end credit means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(y) Person means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(z) Pertinent element of creditworthiness, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(aa) Prohibited basis means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); or the fact

that all or part of the applicant's income derives from any public assistance program.[3]

(bb) Public assistance program means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, medical assistance, and unemployment compensation.

(cc) State means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(dd) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Regulation may be drawn from them.

(ee) Footnotes shall have the same legal effect as the text of this Regulation, whether they are explanatory or illustrative in nature.

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3 The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Regulation refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant, but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in section 4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order, restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income.

SECTION 3. SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS.

(a) Classes of transactions afforded special treatment. The following classes of transactions are afforded specialized treatment:

(1) extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal government, a State, or a political subdivision thereof;

(2) extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) extensions of incidental consumer credit, other than of the types described in subsections (a)(1) and (2):

(i) that are not made pursuant to the terms of a credit card account;

(ii) on which no finance charge as defined in section 1 of Chapter 140C of the General Laws is or may be imposed; and

(iii) that are not payable by agreement in more than four instalments; and

(4) extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsections (a)(1) and (2).

(b) Public utilities credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(1):

(1) section 5(d)(1) concerning information about marital status;

(2) section 10 relating to furnishing of credit information; and

(3) section 12(b) relating to record retention.

(c) Securities credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(2):

(1) section 5(c) concerning information about a spouse or former spouse;

(2) section 5(d)(1) concerning information about marital status;

(3) section 5(d)(3) concerning information about the sex of an applicant;

(4) section 7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) section 7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) section 7(d) relating to signature of a spouse or other person;

(7) section 10 relating to furnishing of credit information; and

(8) section 12(b) relating to record retention.

(d) Incidental credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(3):

(1) section 5(c) concerning information about a spouse or former spouse;

(2) section 5(d)(1) concerning information about marital status;

(3) section 5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) section 5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) section 7(d) relating to signature of a spouse or other person;

(6) section 9 relating to notifications;

(7) section 10 relating to furnishing of credit information; and

(8) section 12(b) relating to record retention.

(e) Business credit. The following provisions of this Regulation shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 5(d)(1) concerning information about marital status;

(2) section 9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 10 relating to furnishing of credit information; and

(4) section 12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

SECTION 4. GENERAL RULE PROHIBITING DISCRIMINATION.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 5. RULES CONCERNING APPLICATIONS.

(a) Discouraging applications. A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) General rules concerning requests for information. (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 13 of Regulation B (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar State official) to monitor or enforce compliance with any Credit Discrimination Statute, this Regulation, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 7(e) regarding insurance and sections 8(c) and (d) regarding special purpose credit programs.

(c) Information about a spouse or former spouse. (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under (v) below) that may be requested about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account; or

(iii) the applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

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4 This subsection is not intended to limit or abrogate any Massachusetts or other law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 6 (rules concerning evaluation of applications).

(iv) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

(v) the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) Information a creditor may not request. (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.[5] Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be

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5 This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b)(1).

revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) Application forms. A creditor need not use written applications. If a creditor chooses to use written forms,[6] it may design its own, use forms prepared by another person, or use the appropriate model application forms contained in Appendix B to Regulation B. If a creditor chooses to use an Appendix B form, it may change the form:

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6 A creditor also may continue to use any application form that complies with the requirements of prior Regulations of the Commission concerning credit discrimination until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first.

(1) by asking for additional information not prohibited by this section;

(2) by deleting any information request; or

(3) by rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d).

SECTION 6. RULES CONCERNING EVALUATION OF APPLICATIONS.

(a) General rule concerning use of information. Except as otherwise provided in this Regulation, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[7]

(b) Specific rules concerning use of information. (1) Except as provided in this Regulation a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[8]

(2)(i) Except as permitted in this subsection, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

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7 The Commission intends this Regulation to be interpreted in light of the Supreme Judicial Court's opinion in Wheelock College v. Massachusetts Commission Against Discrimination, 1976 Mass. Adv. Sh. 2334.

8 This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies, applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with section 8 (special purpose credit programs).

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.[9]

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

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9 Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Massachusetts Fair Credit Reporting Act or other applicable laws.[10]

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) the credit history, when available, of accounts designated as accounts that the applicant is permitted to use or for which the applicant is contractually liable;

(ii) on the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

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10 Sections 50 through 68 of Chapter 93 of the General Laws.

(iii) on the applicant's request, the credit history, when available, of any account reported in the name of a person other than the applicant or the applicant's parent or guardian that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) State property laws. A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

SECTION 7. RULES CONCERNING EXTENSIONS OF CREDIT.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) Action concerning existing open end accounts. (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

(i) require a reapplication; or

(ii) change the terms of the account; or

(iii) terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) Signature of spouse or other person. (1) Except as provided in this subsection, a creditor shall not require the

signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is

necessary to support the extension of the credit requested,[11] a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) Insurance. Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of any Credit Discrimination Statute or this Regulation, but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Regulation, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

SECTION 8. SPECIAL PURPOSE CREDIT PROGRAMS.

(a) Standards for programs. Subject to the provisions of subsection (b), the Credit Discrimination Statutes and this Regulation are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

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11 If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

(i) the program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) the program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) Applicability of other rules. (1) All of the provisions of this Regulation shall apply to each of the special purpose credit programs described in subsection (a) to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subsections (a)(2) or (a)(3) shall qualify as a special purpose credit program under subsection (a) only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or income derived from a public assistance program; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Credit Discrimination Statutes or this Regulation.

(c) Special rule concerning requests and use of information. If all participants in a special purpose credit program described in subsection (a) are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of subsection (a), then, notwithstanding the prohibitions of sections 5 and 6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding

the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

(d) Special rule in the case of financial need. If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in subsection (a), then, notwithstanding the prohibitions of sections 5 and 6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of section 7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Credit Discrimination Statutes or this Regulation.

SECTION 9. NOTIFICATIONS.

(a) Notification of action taken, Equal Credit notice, and statement of specific reasons.

(1) Notification of action taken. A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) Content of notification. Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the general purposes of the Credit Discrimination Statutes; the name and address of both the Commission and the Federal agency that administers compliance with the Federal Equal Credit Opportunity Act concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.[11a]

(3) Multiple applicants. If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) Multiple creditors. If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

11a The Commission is currently reviewing the oral notice procedure in this section, and would appreciate comments on the advisability of eliminating the oral notice option and mandating written disclosure of reasons in all cases.

(b) Form of Equal Credit notice and statement of specific reasons.

(1) Equal Credit notice. A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the general purposes of the Credit Discrimination Statutes, the name and address of the Commission and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar. A creditor may continue to use any form of Equal Credit notice that complies with §202.9(b) of Regulation B until its present stock of forms containing such §202.9(b) notice is exhausted or June 1, 1978, whichever is later.

> The Federal Equal Credit Opportunity Act and comparable provisions of Massachusetts law prohibit creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); or because all or part of the applicant's income derives from any public assistance program. The Federal Equal Credit Opportunity Act also prohibits creditors from discriminating against credit applicants because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the Federal law concerning this creditor is (name and address as specified by Regulation B). The state agency that administers compliance with the state law is the Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, Massachusetts 02108.

(2) Statement of specific reason. A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE

DATE_____

Applicant's Name: _____

Applicant's Address: _____

_____

Description of Account, Transaction, or Requested Credit: _____

_____

Description of Adverse Action Taken:

_____

_____

PRINCIPAL REASON(S) FOR ADVERSE
ACTION CONCERNING CREDIT

_____ Credit application incomplete
_____ Insufficient credit references
_____ Unable to verify credit references
_____ Temporary or irregular employment
_____ Unable to verify employment
_____ Length of employment
_____ Insufficient income
_____ Excessive obligations
_____ Unable to verify income
_____ Inadequate collateral
_____ Too short a period of residence
_____ Temporary residence
_____ Unable to verify residence
_____ No credit file
_____ Insufficient credit file
_____ Delinquent credit obligations
_____ Garnishment, attachment, foreclosure, repossession, or suit
_____ Bankruptcy
_____ We do not grant credit to any applicant on the terms and conditions you request
_____ Appraiser's report, obtained from: (name/address/telephone number): _____
_____ Other, specify: _____
_____

DISCLOSURE OF USE OF INFORMATION
OBTAINED FROM AN OUTSIDE SOURCE

_____ Disclosure inapplicable
_____ Information obtained in a report from a consumer reporting agency

Name:_____

_____

Street Address:_____

_____

Telephone number:_____

_____ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name:_____
Creditor's address:_____

_____

Creditor's telephone number:_____

[Add Equal Credit notice]

(3) Other information. The notification required by subsection (a)(1) may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under any law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) Oral notifications. The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) Withdrawn applications. Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application

and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (a)(1).

(e) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) Notification. A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 10. FURNISHING OF CREDIT INFORMATION.

(a) Accounts established on or after June 1, 1977. (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) designate any such account to reflect the fact of participation of both spouses.[12]

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this subsection (a) (or designated prior to the effective date of this Regulation) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

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12 A creditor need not distinguish between participation as a user or as a contractually liable party.

(3) If a creditor furnishes credit information concerning an account designated under this subsection (or designated prior to the effective date of this Regulation) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.[13]

(b) Accounts established on or after January 1, 1978. (1) For every account established on or after January 1, 1978, a creditor that furnishes credit information shall:

(i) determine whether the account offered by the creditor is one that the applicant will permit to be used by another natural person who is at least eighteen years of age and who is not the applicant's child or spouse or upon which such other natural person shall be contractually liable other than as a guarantor, surety, endorser or similar party; and

(ii) unless the account has been designated under subsection (a)(1)(ii) above, designate the account to reflect the fact of the participation of both the applicant and the authorized user[14] so specified by the applicant or other contractually liable party.

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this subsection (b) (or designated prior to the effective date of this Regulation) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of the applicant and the participating party.

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13 If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

14 If an applicant permits an account to be used by more than one other participant, only one of the participants so authorized need be given the credit reporting rights referred to in subsection (b). If a spouse is one of the listed users, only the spouse shall receive such credit reporting rights.

(3) If a creditor furnishes credit information concerning an account designated under this subsection (b) (or designated prior to the effective date of this Regulation) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the participant about whom such information is requested.

(c) Inadvertent errors. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

SECTION 11. RELATION TO OTHER LAW OF THE COMMONWEALTH.

This Regulation does not alter or annul any provision of the property laws of Massachusetts, laws relating to the disposition of decedents' estates, or banking regulations directed only toward insuring the solvency of financial institutions.

SECTION 12. RECORD RETENTION.

(a) Retention of prohibited information. Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by this Regulation, shall not constitute a violation of the Credit Discrimination Statutes or this Regulation where such information was obtained:

(1) from any source prior to June 1, 1977, provided that such information was not obtained in violation of prior regulations of the Commission; or

(2) at any time from consumer reporting agencies; or

(3) at any time from an applicant or others without the specific request of the creditor; or

(4) at any time as required to monitor compliance with the Federal Equal Credit Opportunity Act, Regulation B, the Credit Discrimination Statutes, this Regulation, or other Federal or State statutes or regulations dealing with credit discrimination matters.

(b) Preservation of records. (1) For 25 months after the date that a creditor notifies an applicant of action taken on an

application, the creditor shall retain as to that application in original form or a copy thereof:[15]

(i) any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with this Regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) a copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) the notification of action taken; and

(B) the statement of specific reasons for adverse action; and

(iii) any written statement submitted by the applicant alleging a violation of the credit discrimination provisions of the Federal Equal Credit Opportunity Act, Regulation B, any Credit Discrimination Statute or this Regulation.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[16]

(i) any written or recorded information concerning such adverse action; and

(ii) any written statement submitted by the applicant alleging a violation of the credit discrimination provisions of the Federal Equal Credit Opportunity Act, Regulation B, any Credit Discrimination Statute or this Regulation.

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15 "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

16 See footnote 15.

(3) In addition to the requirements of subsections (b)(1) and (2), any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the credit discrimination provisions of any Credit Discrimination Statute or this Regulation, or that has been served with notice of a civil action filed by an aggrieved applicant and alleging violation of the credit discrimination provisions of any Credit Discrimination Statute or this Regulation, shall retain the information required in subsections (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the Commission or a court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with section 9 (notifications) shall retain for the time period specified in subsection (b) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.